IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL WRIT PETITION NO.2915 OF 2005

The State of Maharashtra : Petitioner

versus

Abu Salem Abdul Kayyum Ansari]
Karim Park Build No.5,]
3rd floor, Behind Ram Sham] Respondent
Theatre, Jogeshwari (West)] (Org.Accused)
Mumbai.

Mr.S.B.Borulkar, Public Prosecutor, with Mr.D.S.Mhaispurkar and Mrs.P.H.Kantharia APP, for the State.
Mr.O.A.Siddiqui with Mr.A.M.Saraogi for the respondent.

CORAM : D.G.DESHPANDE &
V.M.KANADE, JJ.
DATED : 02nd December 2005.

ORAL ORDER

1. Heard Mr.Borulkar, the learned Public

Prosecutor for the petitioner/State and Mr.Siddiqui, the learned counsel appearing for the respondent/accused. The Designated Court has passed an order on 29th November 2005. It is a short order. We are reproducing the same as under:-

> "Public Prosecutor Mrs.Rohini Salian present. Accused produced from custody. A.C.P. Dhawale present. Advocate Sarogi with Adv.Siddiqui for accused present. Accused stated that he has no complaint about eatable provided by police, no complaint about place where he put for interrogation as I found that accused wanted to tell me something in absence of police and adv. Accused was produced before me. In my chamber accused made grievance that so many officers used to interrogate him because of which some time he used to became restless. Considering the grievance of the accused investigating officer is directed that he himself and/or P.I. Shri Deshmukh should interrogate the accused and no other officer should not interrogate the

accused."

2. The present writ petition is only directed against the following part of the order.

> "Considering the grievance of the accused investigating officer is directed that he himself and/or P.I. Shri Deshmukh should interrogate the accused and no other officer should not interrogate the accused."

According to the learned Public Prosecutor, this order was not called for. Five officers, according to him, are entrusted with the job of interrogating the present respondent/accused and restricting the investigation to two officers out of five is not permissible.

3. At this juncture, Advocate Mr.Siddiqui, appearing for the respondent/accused, firstly, raised an objection about maintainability of the petition. He contended that the investigating agency has applied to the TADA Special Court for modification of the order dated 29.11.2005. When

the learned Public Prosecutor was confronted with this situation, he made a statement that since they have filed this petition, they are not pressing their application for modification filed before the TADA Court.

4. Advocate Mr.Siddiqui, appearing of the respondent/accused, raised 2nd objection to the maintainability on the basis of section 19 of the TADA Act 1987. Section 19 of the TADA Act, 1987 reads as under :-

> **"19.Appeal.--** (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Designated Court to the Supreme Court both on facts and on law.
>
> (2) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order including an interlocutory order of a Designated Court.

> (3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from :
>
> Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days."

According to advocate Mr.Siddiqui, a petition can lie only with the Supreme Court from any judgment, sentence or order and under subsection (2) of section 19 no appeal or revision shall lie to any Court from any judgment sentence, or order including an interlocutory order of a Designated Court. Mr.Siddiqui, therefore, contended that in view of this provision, the petition is not maintainable.

5. As against this, the learned Public Prosecutor, relied upon the judgment of this Court reported in **1994 Cri.L.J.1854 [Mohamad Ahmed Yasin Mansuri v. State of Maharashtra]**

wherein in para 30 this Court has clearly held that bar under section 19 of the TADA Act, reproduced above, does not affect the powers of the High Court under Articles 226 and 227 of the Constitution of India. Mr.Siddiqui, appearing for the respondent/accused contended that this judgment has set aside by the Supreme Court in **State through CBI versus Dawood Ibrahim Kaskar and others [(200) 10 Supreme Court Cases 438.** However, the learned Public Prosecutor pointed out that only certain observations of this Court were found unwarranted or which were found to be made too sweepingly. Those observations are :-

> We are conscious that the view we are taking is likely, in certain cases such as the present one, to hamper investigation. However, this is not a matter for us. We have construed the provisions of the Code and have found that no power is conferred for providing police custody after cognizance of an offence is taken."

The Supreme Court has observed as :-

> We are constrained to say that the above-quoted observations have been made too sweepingly."

Apart from this, We do not find that the Division Bench's Judgment of this court in Mohd.Ahmed Yasin Mansuri's case has been set aside. Section 19 of the TADA Act is no doubt a bar upon the powers of the Court exercising appellate or revisional powers in final order or interlocutory order. But they do not affect the powers of the court when writ petition is filed. Therefore, we do not find that the objection raised by advocate Siddiqui can be upheld.

6. Second objection of advocate Mr.Siddiqui was that the petition is not sustainable because of the application for modification filed by the State before the Designated Special Court. In that regard, we have already noted the statement made by the learned Public Prosecutor that they are not going to press that application.

7. Looking to the merits of the order, advocate Mr.Siddiqui contended that the investigation of Bomb-blast case was originally

done by only two officers and now when only one accused is involved, there is no necessity of entrusting the investigation to five officers. We cannot decide this aspect of the matter. If the investigation is entrusted to five officers, we cannot say it is improper nor we can restrict the number of investigating officers. The impugned order was not called for. In the circumstances, that order is set aside. The petition stands disposed of accordingly. Prayer for stay is rejected. Certified copy expedited.

[D.G.DESHPANDE,J]

[V.M.KANADE,J]